

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

4 Adv. Case No. 22-01139-mg

5 - - - - - x

6 In the Matter of:

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8 CELSIUS NETWORK LLC,

9

10 Debtor.

11 - - - - - x

12 CELSIUS NETWORK LIMITED et al.,

13 Plaintiffs,

14 v.

15 STONE et al.,

16 Defendants.

17 - - - - - x

18 United States Bankruptcy Court

19 One Bowling Green

20 New York, NY 10004

21

22 December 20, 2022

23 8:58 AM

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1 B E F O R E :

2 HON MARTIN GLENN

3 U.S. BANKRUPTCY JUDGE

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5 ECRO: F. FERGUSON

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1 HEARING re Adversary proceeding: 22-01139-mg Celsius Network
2 Limited et al v. Stone et al
3 Hearing Using Zoom for Government

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5 HEARING re Adversary proceeding: 22-01139-mg Celsius Network
6 Limited et al v. Stone et al

7 Hearing Using Zoom for Government RE: Objection to Notice of
8 Presentment RE: Application to Employ Ernest & Young LLP as
9 Tax Compliance and Tax Advisory Services Provider. (Doc ##
10 1404, 1585)

11
12 Hearing Using Zoom for Government RE: Motion for the
13 Appointment of a Chapter 11 Mediator Filed by Immanuel Mr.
14 Herrmann. (Doc## 1630, 1680, 1722, 1723, 1726, 1730, 1738,
15 1739, 1742, 1743, 1750)

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1 P R O C E E D I N G S

2 CLERK: All right. Good morning. Starting the
3 recording for December 20, 2022 at 9:00 AM. Calling Celsius
4 Network Limited v. Stone et al, Case Number 22-1139.

5 Mr. Roche, maybe we could start with you?

6 MR. ROCHE: Yes, this is Kyle Roche on behalf of
7 Defendants Jason Stone and KeyFi Inc.

8 CLERK: Okay, thank you. And then Mr. Stanley, I
9 have you as listen only. Is that correct?

10 MR. STANLEY: That's correct.

11 CLERK: Okay. Thank you. Mr. Chapman, if you
12 could unmute and give your appearance, please?

13 MR. CHAPMAN: Good morning. Dean Chapman, Akin
14 Gump Strauss Hauer Feld, for the Plaintiffs, the Celsius
15 Plaintiffs.

16 CLERK: Okay. Is Mr. Hurley going to be joining
17 as well?

18 MR. CHAPMAN: Yes, he will be.

19 CLERK: Okay. Thank you. Everyone in the waiting
20 room looks like they're here for the 10:00, so... Unless,
21 (indiscernible), are you saying something -- am I missing
22 anyone?

23 MAN 1: No, other than Mr. Hurley, I don't believe
24 so.

25 CLERK: All right. Please pause the recording.

1 All right. Mr. Hurley, if you could unmute and give your
2 appearance please?

3 MR. HURLEY: Good morning. Mitchel Hurley, with
4 Akin Gump Strauss Hauer & Feld, special litigation counsel
5 for the Plaintiffs -- the Plaintiff Celsius Defendants,
6 Debtors.

7 CLERK: Thank you. Is Mr. Schneider -- I have him
8 on my list. Is he supposed to be joining? I see a David
9 Schneider with a speaking role.

10 MR. HURLEY: I don't recognize that name.

11 CLERK: Okay. All right. I also have -- and
12 everyone else is listen only. Judge, would you like to get
13 started?

14 THE COURT: Yes, I would, Deanna. All right.
15 Good morning. This is Judge Glenn. Mr. Hurley, are you
16 going to begin?

17 MR. HURLEY: Yes, Your Honor. First of all,
18 thanks for the time this morning on short notice. We
19 appreciate it. I was thinking I should begin with a brief
20 update on the status of the preliminary injunction motion
21 and discovery.

22 So, during the November 23rd status conference,
23 Your Honor set a hearing date of January 11th and 12th, if
24 necessary, and a cutoff for preliminary injunction discovery
25 of December 22.

1 Connor Nolan, who is the witness that was
2 identified by Mr. Roche during the November 23rd conference
3 is going to be deposed tomorrow, December 20th. Jason Stone
4 is going to be deposed on December 21st.

5 After the conference on the 23rd, the parties met
6 and conferred and we also agreed to exchange some expedited
7 document discovery in advance of the depositions. So, five
8 days ago, Celsius produced documents returned by search
9 terms that we negotiated with the Defendants. Again, it's
10 documents that were then in our possession, custody or
11 control and of which Connor Nolan is the custodian. Stone
12 produced certain documents over the weekend.

13 We agreed on two stipulations, which the Court
14 entered last week, and thank you again for that.

15 THE COURT: I have them in front of me in case we
16 needed them. Go ahead.

17 MR. HURLEY: Sorry. One of them governing the PI
18 definitions themselves and the other providing some of the
19 relief requested in the motion, but leaving other relief for
20 determination by the Court in January.

21 Okay. So that pretty much brings us up-to-date.
22 Let me come to the issue that we wanted to raise with Your
23 Honor, and there's another issue we really kind of wanted to
24 preview.

25 So we asked for your time this morning to resolve

1 the dispute we are having about whether a particular witness
2 should be allowed to be called at the hearing. So, in
3 particular, Celsius is asking the Court to preclude the
4 Defendants from calling at the hearing a witness named
5 Richard Ma, whom the Defendants first identified on Friday,
6 December 14, 2022.

7 Richard Ma is the owner and manufacturer of a
8 company called Quantstamp. It's a company that Celsius paid
9 to create a so-called wormhole program that was supposed to
10 track the Defendants' deployment activities, but that wasn't
11 delivered.

12 When the Defendant's identified Mr. Ma on December
13 14th, they said that they wanted to call him supposedly to
14 rebut the Alex Mashinsky declaration that was submitted with
15 Celsius' December 2nd reply. We think there are a number of
16 reasons, though, why it would be unfair and inappropriate to
17 allow the Defendants to introduce this new witness at this
18 late stage.

19 So, first, it isn't true rebuttal testimony. The
20 only thing that Mashinsky did in his December 2nd
21 declaration was deny a claim that was made by Stone for the
22 first time in the Defendants' November 28th opposition
23 papers. So, specifically, in his November 28th declaration,
24 Stone claimed that Mashinsky authorized him to buy NFTs with
25 Celsius assets and transfer them to Defendants as an advance

1 on profit share.

2 In his December 2nd declaration, which contains
3 just two very short substantive paragraphs, Mashinsky just
4 denies Stone's November 28th claim. So any Ma testimony to
5 rebut Mashinsky would just consist of cumulative testimony
6 supporting the claim that Stone already made on November
7 28th.

8 And we submit if Defendants wish to include
9 additional evidence in support of what we understand to be
10 their primary and maybe only defense, this authorization
11 defense, they should've done so in connection with the
12 November 28th opposition. They didn't. And in fact, they
13 didn't so much as mention Richard Ma or his company
14 Quantstamp anywhere in their opposition papers.

15 We also think it's just too late. So, even if
16 this were actual rebuttal testimony, Defendants have had the
17 very short Mashinsky declaration for more than two weeks
18 now, since December 2nd. Again, they didn't identify Ma as
19 a potential witness until last Friday morning. That just
20 left four business days before the end of the discovery
21 period that the Court set on November 23rd. And two of
22 those days are already consumed with prescheduled
23 depositions.

24 Defendants' interest in Ma was also unknown to
25 Celsius at the time that we negotiated the expedited

1 document discovery I mentioned before. Had we known he
2 would be a witness, Celsius certainly would've sought
3 related documents on an expedited basis from the Defendants
4 in advance of the depositions.

5 And that brings us to another issue I think is
6 important for the Court to be aware of, Your Honor, which is
7 that Richard Ma and his company Quantstamp have been ducking
8 Celsius discovery for over a month now. So Celsius actually
9 served a subpoena on Quantstamp more than a month ago that
10 was returnable weeks ago, and Quantstamp just ignored the
11 subpoena.

12 We then emailed to executives of Quantstamp,
13 including Mr. Ma, and directly asked if and when we could
14 expect a response to our subpoena. And they ignored our
15 emails as well. And so now, out of nowhere, the Defendants
16 want Ma to act as a witness at an important stage of the
17 proceedings, and we think it just isn't fair and shouldn't
18 be allowed. If --

19 THE COURT: May I ask, Mr. Hurley, was Mr. Ma
20 served with a subpoena by you? Was the subpoena served?

21 MR. HURLEY: The subpoena was served on
22 Quantstamp, his company. And this was -- I think Mr.
23 Chapman may have the date in front of him. I actually do
24 not. Dean, when did we serve that subpoena?

25 MR. CHAPMAN: November 2nd.

1 MR. HURLEY: November 2nd. We followed up with an
2 email directly to Mr. Ma, because no one responded to the
3 Quantstamp subpoena, and he ignored our email.

4 THE COURT: Where is he located?

5 MR. HURLEY: Well, that's another issue is that
6 when we got the identification of Ma on Friday, we said,
7 look, we object to this, but give us some information.
8 Provide us with a declaration that you want to submit from
9 him. We'll consider it. And you need to give us his
10 address at a bare minimum so that we can serve a subpoena.
11 And the Defendants have not given us either the declaration
12 or his address. So we don't know his physical mailing
13 address.

14 THE COURT: Where did you serve the subpoena on
15 Quantstamp?

16 MR. HURLEY: Dean?

17 MR. CHAPMAN: We served a registered agent. Let
18 me -- I can try to quickly pull the affidavit of service --

19 THE COURT: You just have to identify yourself
20 every time you speak, Mr. Chapman. Go ahead.

21 MR. CHAPMAN: Yeah, Dean Chapman, Akin Gump. Let
22 me check the affidavit of service.

23 THE COURT: Okay.

24 MR. HURLEY: So, just to sum up, Your Honor, our
25 view is he shouldn't be permitted at the hearing at all.

1 It's too late. It's cumulative. But if he is, at a
2 minimum, in our view anyway, this is really like trial by
3 ambush, and we'd need to have information in advance and an
4 opportunity to depose him and potentially take some document
5 discovery as well.

6 THE COURT: Let me ask you a further question.
7 What did you ask for in the subpoena that you served?

8 MR. HURLEY: The subpoena, I don't have at my
9 fingertips, but it was related to Quantstamp's role in
10 preparing this so-called wormhole that had been promised.
11 It was supposed to track the activities of Mr. Stone so that
12 Celsius would know basically what he was doing and would be
13 able to have a better idea on their own terms of his
14 performance. But it wasn't delivered, so --

15 THE COURT: You obviously thought that he might
16 have -- he and his company would have relevant information
17 in this adversary proceeding if you served a discovery
18 request, a subpoena for discovery. Isn't that true?

19 MR. HURLEY: We did. Not necessarily with respect
20 to the preliminary injunction motion, Your Honor. We didn't
21 speak expedition in connection with the motion or anything
22 like that. But certainly, Mr. Maw and Quantstamp are
23 parties that were involved in the wormhole process, which we
24 think is ultimately going to be relevant. But we had no --
25 we ourselves didn't think it was going to be particularly

1 relevant to the preliminary injunction motion. And of
2 course, the Defendants didn't say anything about it until
3 Friday.

4 THE COURT: So, with respect to the subpoena, when
5 was the response to the subpoena due?

6 MR. CHAPMAN: The response -- for the record, Dean
7 Chapman, Akin Gump. The response to the subpoena was due
8 November 28th. It was served on Quantstamp's registered
9 agent, Capital Services in Albay, New York.

10 THE COURT: Where is the company based? Do you
11 know?

12 MR. CHAPMAN: We don't know. I can say Richard
13 Ma's LinkedIn would indicate San Francisco. But that's as
14 far as we know.

15 MR. ROCHE: All right. Your Honor, may I respond
16 to --

17 THE COURT: Yeah, I just want to -- I want to make
18 sure -- anything else, Mr. Hurley, before I call on Mr.
19 Roche?

20 MR. HURLEY: No, Your Honor. There's another
21 issue we want to preview, but I'm happy to have Mr. Roche
22 respond, of course, to what we just presented.

23 THE COURT: Go ahead, Mr. Roche.

24 MR. ROCHE: Good morning, Your Honor. Kyle Roche,
25 for Defendants KeyFi and Jason Stone. I wanted to start by

1 just going to the relevant timeline quickly. November 15th,
2 Plaintiffs filed their preliminary injunction. In support
3 of that preliminary injunction they offered three
4 affidavits. None of those three affidavits stated that the
5 transactions at issue here, particularly the NFTs, were
6 unauthorized transactions.

7 So, at the time we received the preliminary
8 injunction order and what we were responding on November
9 28th, we were responding to those three affidavits. I don't
10 have them in front of me, but I believe by recollection it's
11 affidavits of Patrick Holert, Mr. Sabo and Kleiderman, Mr.
12 Kleiderman, were the three affidavits that supported the
13 initial motion for injunction.

14 So, when we submitted our affidavit from Mr. Stone
15 in response on November 28th, in that affidavit Mr. Stone
16 explained that the NFT purchases and the subsequent
17 transfers were authorized by Alex Mashinsky, Celsius' then
18 CEO.

19 Contrary to what Plaintiffs just stated, they've
20 known that that was our position for over a year now. It
21 was -- in addition to it being our position from documents
22 and from discussions pre-litigation, it was asserted in the
23 New York Supreme action. So they've known that it was our
24 position that those transactions were authorized by Mr.
25 Mashinsky himself prior to Mr. Stone and KeyFi's departure

1 from Celsius.

2 And so at the time when we submitted our November
3 28th brief, we believed that that testimony was going to be
4 un rebutted because the three affidavits that were submitted
5 on November 15th did not rebut the position that those
6 transactions were authorized as an advance on the profit
7 share.

8 On December 5th -- so I believe Mr. Hurley said
9 the affidavit for Mr. Mashinsky was December 2nd -- I
10 believe it was December 5th. Mr. Mashinsky submitted for
11 the first time in this litigation an affidavit claiming that
12 those -- with no supporting documents -- and I think it was
13 a two-paragraph declaration -- stating that those
14 transactions were not authorized and that they were not an
15 advance on the profit share.

16 At that point in time, we identified with working
17 with KeyFi and Mr. Stone other witnesses who could
18 cooperate, because at this point it was going to be a
19 contested fact for the preliminary injunction hearing, the
20 question of whether or not those transactions, the NFTs at
21 issue in this underlying litigation, were authorized at the
22 time that KeyFi and Mr. Stone made those purchases.

23 We worked with Mr. Stone to identify other third-
24 party disinterested witnesses who would have information
25 relevant to these transactions. And at that point in time,

1 we identified Mr. Ma. We contacted Mr. Ma last week. I
2 spoke with him last week and we -- and had a meet and
3 confer, I believe, Friday morning. I told Mr. Hurley that
4 we at that point in time we intended to call Mr. Ma and that
5 we would work with them to both provide a declaration to the
6 extent we could facilitate it, and to the extent we could
7 help facilitate a deposition, we would.

8 Finally, I am not -- I don't control Mr. Ma. I
9 understand he's based in Toronto, Canada. And I think
10 that's where he most of the time resides and runs his
11 company out of. And they have employees all over the place.
12 I think they have over 70 employees. But I understand that
13 Mr. Ma is headquartered, he himself, in Toronto.

14 While we don't have control over Quantstamp, we're
15 happy to try to facilitate whatever discovery we can ahead
16 of the January 11th hearing. But Celsius' position that we
17 should be precluded from calling Mr. Ma, to rebut Mr.
18 Mashinsky, is patently unfair. Celsius --

19 THE COURT: Were you aware that Celsius previously
20 served a subpoena on Quantstamp?

21 MR. ROCHE: I was aware, yes.

22 THE COURT: And were you aware that Ma and
23 Quantstamp never responded?

24 MR. ROCHE: I was not aware that. And I
25 understand -- I understand from Mr. Ma that he's represented

1 by Quinn Emanuel. And my -- I understand that Quinn Emanuel
2 did respond. I was not on those communications. And if
3 Akin -- if Mr. Hurley and Dean say that they haven't
4 responded yet, I'd take them at their word. But it was my
5 understanding that Quinn Emanuel did respond to the subpoena
6 from --

7 THE COURT: Mr. Hurley, Mr. Chapman, did Quinn
8 Emanuel respond or communicate with you about the subpoena?

9 MR. HURLEY: I certainly didn't receive any
10 communication from Quinn Emanuel about the subpoena.

11 THE COURT: Mr. Chapman?

12 MR. CHAPMAN: No, Your Honor.

13 THE COURT: No communication whatsoever Quinn
14 Emanuel indicating it was representing Quantstamp? Is that
15 correct?

16 MR. HURLEY: Correct, Your Honor.

17 MR. CHAPMAN: Correct, Your Honor.

18 THE COURT: All right.

19 MR. ROCHE: Then I --

20 THE COURT: Mr. --

21 MR. ROCHE: I understand from Mr. Ma he is
22 represented by Quinn Emmanuel.

23 THE COURT: Mr. Roche --

24 MR. ROCHE: Yes.

25 THE COURT: I had previously asked who you

1 intended to call his witness at the hearing and Ma was not -
2 - was never mentioned.

3 MR. ROCHE: Yes, Your Honor, because at that time
4 we did not believe we were responding to an affidavit that
5 was put in by Mr. Mashinsky on December 5th. And at that --

6 THE COURT: Were you planning to call Mr. Maw live
7 at the hearing?

8 MR. ROCHE: Now we are. As of today, we are
9 planning on calling Mr. Maw live at the hearing.

10 THE COURT: And he --

11 MR. ROCHE: And we understand from him, at least
12 what he represented to me last week, that he was willing to
13 fly to New York to testify live.

14 THE COURT: Well, let me simplify this, okay?
15 Unless Mr. Maw makes himself available for a deposition by
16 noon on Thursday of this week, I'm precluding any testimony
17 from Ma at the trial, at the hearing. I accept the
18 statements of the Akin Gump lawyers that they previously
19 served a subpoena on Quantstamp and that response was due on
20 November 28th. They've gotten no response. Unless he is
21 available for deposition by noon on Thursday of this week by
22 them, he will not be permitted to testify at the hearing.
23 If he submits to a four-hour deposition to be completed by
24 noon on Thursday, I will permit him to testify at the
25 preliminary injunction hearing. Otherwise, I will not.

1 This has the characteristics of a sandbag and I'm
2 not going to initially preclude you from calling him as a
3 witness. But I'm not going to have him lay in the weeds and
4 fail to respond to a subpoena that's been served that called
5 for a response last month and have you -- when you didn't
6 previously identify him as a witness for the hearing.

7 So that's going to be my order. I'm so ordering
8 the transcript. Ma will make himself available for
9 deposition in either New York or Toronto by -- a four-hour
10 deposition to be concluded by this Thursday at noon, New
11 York time. If he fails to make himself available for that
12 deposition, he will not be permitted to testify at the
13 preliminary injunction hearing.

14 MR. ROCHE: Your Honor, just want to understand,
15 Your Honor. One point of clarification. Do you mean start
16 by noon on Thursday or finish by noon --

17 THE COURT: No. I mean it has to finish by noon
18 on Thursday.

19 MR. ROCHE: Understood.

20 THE COURT: And not only to testify in deposition
21 but to produce documents responsive to the subpoena that's
22 been served so that Akin Gump has those documents before
23 they depose him. So they'd better produce documents today
24 or tomorrow and, you know... But to be clear, unless
25 documents are produced and he is available for a four-hour

1 deposition in either New York or Toronto, he will be
2 precluded from testifying at the preliminary injunction
3 hearing.

4 MR. ROCHE: Understood, Your Honor.

5 THE COURT: Mr. Hurley?

6 MR. HURLEY: Your Honor, may I ask one other
7 thing? So, each of the other witnesses put in a declaration
8 that will comprise their direct testimony at the hearing.
9 And one of our requests was that we get that declaration
10 from Mr. Ma so we know what it is he's being offered for.

11 THE COURT: You're going to -- you know, he is not
12 an employee of KeyFi. And consequently, I don't believe
13 that Mr. Roche can force him to provide a declaration in
14 advance. So, you'll get your deposition.

15 MR. HURLEY: Understood, Your Honor.

16 THE COURT: And certainly, since Roche is not
17 representing Ma, you can certainly ask during the deposition
18 what he's discussed with Mr. Roche. There's no privilege
19 attached and you can cover what anticipated discovery did he
20 discuss with Roche. So you'll find out what it was he's
21 prepared to testify and you can ask him whatever you want.
22 But a four-hour deposition.

23 MR. HURLEY: Understand. And Kyle, if you could
24 send me the name of the Quinn person you think is repping
25 him?

1 MR. ROCHE: Will do. I will find that out this
2 morning and will respond to you immediately.

3 00:21:58 THE COURT: All right. We're adjourned.

4 (Recess)

5 CLERK: All right. Starting the recording for
6 December 20, 2022 at 10:00 AM. All right. Can counsel on
7 behalf of Kirkland's please unmute and just start giving
8 their appearance?

9 MR. KOENIG: Good morning, Deanna. It's Chris
10 Koenig, from Kirkland & Ellis, here for the Celsius Debtors.
11 I'm here with my partners, Pat Nash and Ross Kwasteniet.
12 Thank you.

13 CLERK: Okay. Thank you. And I know we have also
14 a line for Elizabeth Jones from Kirkland's, and they checked
15 in before. All right. I'm going -- good morning, Mr.
16 Herrmann. Can you hear me?

17 MR. HERRMANN: I can.

18 CLERK: You're coming in a little choppy.

19 MR. HERRMANN: Is this better?

20 CLERK: Yes. Yes, it is. If you could just give
21 your appearance this morning?

22 MR. HERRMANN: Immanuel Herrmann, pro se Celsius
23 creditor.

24 CLERK: Thank you. And there's some of the
25 creditors (indiscernible) counsel. For the parties that

1 have joined, if anyone is speaking on the record this
2 morning and has not given their appearance, please raise
3 your hands one at a time and I will ask you to unmute and
4 give your appearance. Yes, Ms. Milligan?

5 MS. MILLIGAN: Good morning. Can you hear me
6 okay?

7 CLERK: Yes, I can.

8 MS. MILLIGAN: Thank you. Layla Milligan, with
9 the Texas Attorney General's Office, appearing on behalf of
10 the Texas State Securities Board and Texas Department of
11 Banking.

12 THE COURT: Thank you.

13 MS. MILLIGAN: Thank you.

14 CLERK: And Shara?

15 MS. CORNELL: Good morning. Shara Cornell, on
16 behalf of the office the United States Trustee.

17 CLERK: Thank you.

18 MS. CORNELL: Thank you.

19 CLERK: Are Mark Bruh or Brian Matsumoto going to
20 be joining?

21 MS. CORNELL: Yes, I believe so, although I'm not
22 sure if they'll be speaking.

23 CLERK: Okay. So you're speaking this morning.
24 Perfect.

25 MS. CORNELL: Thank you.

1 CLERK: Thank you. Victor?

2 MR. DE LAS HERAS: Good morning, Deanna. Victor
3 L. Ubierna de las Heras, pro se creditor. I'll be speaking
4 this morning.

5 CLERK: Thank you. All right. I see we have some
6 Committee counsel. If you could unmute one at a time and
7 just give your appearance, please?

8 MR. PESCE: Sure. It's Gregory Pesce, White &
9 Case, on behalf of the Committee. And I believe my partner,
10 Aaron Colodny, if he hasn't already appeared, is going to be
11 the other main speaker for today.

12 CLERK: Okay. So the both of you. All right.
13 Perfect.

14 MR. PESCE: Thank you.

15 CLERK: Thank you. Ms. Kovsky?

16 MS. KOVSKY: Good morning, Deb Kovsky, Troutman
17 Pepper, for the Ad Hoc Group Withhold Account Holders.

18 CLERK: Thank you. All right. Are there any
19 additional parties that have joined that will be speaking on
20 the record and have not given their appearance yet?

21 All right. Good morning. For the parties that
22 have joined, please use their raised hand function and I
23 will ask you to unmute if you are speaking on the record and
24 have not given your appearance yet. All right. Mr. Adler,
25 let's start with you.

1 MR. ADLER: Good morning, Your Honor. It's David
2 Adler, from McCarter & English, on behalf of the Ad Hoc
3 Group of Borrowers. I probably will be speaking today.

4 CLERK: All right. Thank you.

5 MR. ADLER: Thank you.

6 CLERK: All right. Mr. Marsh?

7 MR. MARSH: Good morning. This is Chase Marsh.
8 I'm an involuntary pro se creditor. I sure hope I don't
9 have to speak today, but I probably will.

10 CLERK: All right. Thank you for giving your
11 appearance.

12 MR. MARSH: Thank you. Mr. Sabin.

13 MR. SABIN: It's Jeff Sabin, from Venable LLP, on
14 behalf of Ignat Tuganov. I expect to be speaking today.

15 CLERK: All right. Is Arie Peled also speaking?

16 MR. SABIN: He is not.

17 CLERK: Okay. Thank you.

18 MR. SABIN: Thank you very much.

19 CLERK: All right. Mr. Ferraro, if you could
20 unmute and give your appearance, please?

21 MR. FERRARO: Hi. Chris Ferraro, with the
22 Debtors, Interim CEO, Chief Restructuring Officer and Chief
23 Financial Officer.

24 CLERK: Thank you. For the other parties that
25 have joined, if you could raise your hands, use the raise

1 hand function, and if you are speaking on the record this
2 morning and have not given your appearance yet? Yes. Ms.
3 Pillay?

4 MS. PILLAY: Good morning, Deanna. Shoba Pillay
5 from Jenner & Block, as the Examiner.

6 CLERK: Thank you. And then is Mr. Lazar and Mr.
7 Wedoff should be joining as well?

8 MS. PILLAY: Yes.

9 CLERK: Thank you. Any additional parties that
10 have joined and have not given their appearance yet?

11 MS. ALMEIDA: Good morning. Nelly Almeida, from
12 Milbank LLP, on behalf of Certain Holders of Series B
13 Preferred Shares.

14 CLERK: Okay. Thank you. Are any other parties
15 from Milbank going to be speaking this morning? Do you
16 know?

17 MS. ALMEIDA: No. I don't expect there to be.

18 CLERK: Okay. Thank you. All right. For the
19 parties that have joined, if you're going to be speaking on
20 the record and have not given your appearance yet, please
21 use the raise hand function to give your appearance. All
22 right. Mr. Lazar.

23 MR. LAZAR: Good morning, Ms. Anderson. Vincent
24 Lazar, Jenner & Block, on behalf of the Examiner.

25 CLERK: Thank you.

1 THE COURT: Hi, Deanna.

2 CLERK: Good morning, Judge, again.

3 THE COURT: Again.

4 CLERK: For the parties that have joined, if
5 anyone is going to be speaking on the record this morning
6 and has not given their appearance yet, please use the
7 raised hand function to give your appearance.

8 All right. For the parties that adjoined, if
9 anyone is speaking on the record this morning and has not
10 given their appearance, please use the raised hand function
11 and I will take your appearance one at a time. Mr.
12 Frishberg?

13 MR. FRISHBERG: Yes. Daniel Frishberg, pro se.

14 CLERK: Thank you. All right. Please pause the
15 recording for a moment. All right. For the parties that
16 have joined, if anyone is speaking on the record this
17 morning and has not given their appearance yet, please use
18 the raised hand function and I will ask for you to give your
19 appearance one at a time. Aaron Colodny?

20 MR. COLODNY: Hi, Deanna. This is Aaron Colodny,
21 for the Official Committee of Unsecured Creditors, with
22 White & Case LLP.

23 CLERK: All right. Thank you. All right. Karen
24 Cordry? Sorry, I can't hear you.

25 MS. CORDRY: Yeah, sorry.

1 CLERK: Oh, there you go.

2 MS. CORDRY: Karen Cordry, National Association of
3 Attorneys General, representing the Coordinating States.

4 CLERK: All right. Perfect. Thank you. And for
5 those that have joined, if you're speaking on the record
6 this morning and have not given your appearance and you'd
7 like to speak, please use the raised hand function and I
8 will ask you to give your appearance one at a time.

9 Again, the parties that have joined, if anyone is
10 speaking on the record this morning and has not given your
11 appearance, if you could please use the raised hand function
12 and I will take your appearance one at a time. Mr. Kotliar,
13 are you speaking on the record this morning?

14 MR. KOTLIAR: Good morning. Brian Kotliar, of
15 Togut, for the Ad Hoc Group of Custodial Account Holders.
16 It's possible that I will be speaking.

17 CLERK: All right. Is Kyle Ortiz going to be
18 joining as well?

19 MR. KOTLIAR: No.

20 CLERK: Okay. Thank you. All right. Again, for
21 the parties that have joined, if anyone is speaking on the
22 record this morning and has not given your appearance,
23 please use the raised hand function and I will take your
24 appearance one at a time. All right. Mr. Bernstein?

25 MR. BERNSTEIN: Good morning. Jeffrey Bernstein,

1 McElroy Deutsch Mulvaney & Carpenter, for the New Jersey
2 Bureau of Securities. Just in case I speak, I wanted to
3 indicate my appearance. Thank you.

4 CLERK: Thank you. I appreciate that. Again, for
5 the parties that have joined, if anyone is speaking on the
6 record this morning and has not given your appearance yet,
7 please use the raised hand feature and I will ask you to
8 unmute and give your appearance.

9 All right. Again, for the parties that have
10 joined, if anyone is speaking on the record this morning and
11 has not given your appearance, please raise your hands. Use
12 the raised hand function. I'll ask you to unmute and give
13 your appearance. Yes, Jennifer?

14 MR. ROOD: Jennifer Rood, from Department of
15 Financial Regulation.

16 CLERK: Thank you. All right. Please pause the
17 recording for a minute.

18 We're recording. All right. We're going to get
19 started. If everyone could please state their name each
20 time they speak on the court record. Also, this is a court
21 proceeding. Audio, video and any other recording or --
22 pardon me -- any other recording of this hearing shall not
23 take place, other than the official court version. If it is
24 found out that there is other recording, audio, video, et
25 cetera, that takes place, sanctions may be imposed.

1 Judge, would you like to begin?

2 THE COURT: Yes, I would. Thank you. And good
3 morning, everybody. The Debtors filed an amended agenda for
4 today's hearing. We're follow that hearing agenda. Let's
5 start with the status update.

6 MR. KOENIG: Good morning, Your Honor. For the
7 record, Chris Koenig, Kirkland & Ellis, for the Debtors.
8 Deanna, could you please give screen share privileges to the
9 Zoom account labeled "Chris Koenig", so that we can put the
10 slides that we filed last night up on the screen?

11 THE COURT: Right. And I believe the slides have
12 been filed as ECF Docket Number 1758 as an attachment to the
13 notice of filing.

14 MR. KOENIG: Yes. Thank you, Your Honor. And
15 I'll introduce Mr. Christopher Ferraro, who provided a
16 status update to the Court on November 15th. We thought it
17 would be beneficial for him to provide another update, now
18 that it's been about a month. So, with the Court's
19 permission, we'll go ahead with Mr. Ferraro.

20 THE COURT: I appreciate that. Go ahead.

21 MR. KOENIG: Thank you. Mr. Ferraro, can you
22 please remind the Court of your current roles at Celsius and
23 your general qualifications and experience?

24 MR. FERRARO: Yeah, thanks, Mr. Koenig, and good
25 morning, Your Honor. I'll be brief in this answer, as I've

1 provided my background before. My name is Christopher
2 Ferraro. I am the Interim Chief Executive Officer, Chief
3 Restructuring Officer, and Chief Financial Officer of
4 Celsius. I was appointed Chief Financial Officer on July
5 11, 2022 and was appointed as Interim Chief Executive
6 Officer and Chief Restructuring Officer on September 27,
7 2022.

8 I have approximately two decades of experience in
9 financial planning and analysis, asset and liability
10 management, and product control.

11 MR. KOENIG: Mr. Ferraro, can you please provide
12 an update on the current financial situation of Celsius?

13 MR. FERRARO: Yes, based on the most recent cash
14 flow budget employment report that was filed on December
15 12th, the total cash receipts vary by week, ranging from
16 approximately \$1.5 million to nearly \$8 million. Our
17 forecast shows that by the end of the year, we will have
18 baseline liquidity of around \$95 million.

19 Before taking into account the proceeds from the
20 sale of GK8, the latest forecast shows that we will need a
21 liquidity infusion late in the first quarter of 2023. We
22 will get quite tight in February, but the baseline liquidity
23 of approximately \$30 million.

24 We expect to need additional liquidity in March.
25 However, once the recent GK8 sale closes and the Court

1 resolves the issue of which party is entitled to the value
2 of the GK8 sales proceeds, we could extend another 1.5 to 2
3 months. And if the Court approves the sale of stablecoins,
4 the total runway would extend to around May or June.

5 We filed for recognition of the GK8 sales
6 proceedings with the Israeli Court yesterday, December 19th,
7 and await the Court's decision. Our best estimate on the
8 timing of the Israel recognition ruling is the end of
9 January, and we expect the sale to close shortly thereafter.

10 With respect to coins, our total coin value as of
11 the end of November was just above \$2.6 billion. We have
12 over \$1 million in sETHs and approximately \$630 million in
13 WBTC of ETC. The current equity of all, with the coin and
14 non-coin assets is approximately \$1.2 billion.

15 MR. KOENIG: Thank you, Mr. Ferraro. Can you
16 please tell the Court about the current status of the
17 custody account withdrawals that have been authorized
18 pursuant to the Debtors' withdrawal motion?

19 MR. FERRARO: Yes. Given that the Court recently
20 authorized us to open withdrawals of certain custody and
21 withhold accounts, we are working with our team to return
22 these assets to the eligible customers as soon as possible.
23 We are working through and implementation on our end and we
24 understand how important this is for our customers. This is
25 a major priority for us, with an emphasis on security and

1 ensuring the system, which has been off-line for months, is
2 brought back online safely and securely, to ensure that the
3 assets are protected and distributed in accordance with the
4 order of the Court.

5 MR. KOENIG: Mr. Ferraro, can you please tell the
6 Court about the implementation of the recently approved key
7 employee retention plan?

8 MR. FERRARO: Yes, absolutely, Mr. Koenig. Since
9 my last update, we received a Court order authorizing the
10 company to make awards to a revised list of non-insider
11 employees. In terms of numbers, the original employee
12 retention plan included around 59 employees, which
13 represents about 35 percent of the total current workforce,
14 not taking into account employees who have submitted
15 resignations or are in the notice period following the
16 recent RIF action.

17 In addition, we had discussed at the last hearing
18 since filing the initial KERP that we have continued to look
19 into a number of employees' withdrawals made before the
20 pause. And as a result, working with our advisors, the
21 Committee and the Special Committee, we reduced the initial
22 list and expect to wrap up our investigation soon, so we can
23 propose having back a number of employees in the future.

24 Lastly, we set aside around \$200,000 for employees
25 that are not among the 59 initially selected, but that

1 depending on the circumstances, we may need to incentivize
2 to stay with the company down the line.

3 In addition to some of the critical efforts we
4 have discussed throughout the hearings, including asset and
5 data security and responding to information requests to
6 support our Chapter 11 process, our team members are focused
7 on a number of critical areas. And I thought I would
8 highlight just a few of these today.

9 As I will discuss shortly, there is a great deal
10 of work underway in our product around the standalone
11 reorganization plan, which we are currently referring to as
12 a NewCo. And our technology team prepares for the reopening
13 of withdrawals for certain custody and withhold accounts.
14 They are also working to architect the technology to support
15 the NewCo.

16 MR. KOENIG: Thank you, Mr. Ferraro. Switching
17 gears for a moment, can you please --

18 THE COURT: I'd ask a question --

19 MR. KOENIG: -- provide a high-level summary of
20 the status of the ongoing --

21 THE COURT: Wait.

22 MR. KOENIG: I'm sorry.

23 THE COURT: Mr. Koenig, before you go on, at the
24 last hearing when we discussed the KERP, there were
25 resignations that had been submitted. People had not yet

1 left. Putting those aside, have there been any additional
2 resignations since the last hearing when I had an update
3 from Mr. Ferraro?

4 MR. FERRARO: Yeah, great question, Your Honor.
5 I'm going to work off of -- since the last time we filed an
6 amended KERP quite recently. We've had a total of 13
7 resignations since then. One of the 59 on the KERP resigned
8 as well. So 12 not the KERP; one on the KERP.

9 THE COURT: Thank you.

10 MR. FERRARO: Yep.

11 MR. KOENIG: Thank you. Mr. Ferraro, just to
12 repeat my question, can you please provide a high-level
13 summary of the status of the ongoing bid process?

14 MR. FERRARO: Yes, Mr. Koenig. Since September of
15 2022, we have been working with our advisors to conduct a
16 marketing process for our retail (indiscernible) business.
17 We've contacted over 125 parties with 30 potential bidders,
18 executing NDAs. Interested parties under an NDA were given
19 access to a comprehensive virtual data room and the Celsius
20 management team, so that these potential bidders could
21 conduct a thorough due diligence process before they
22 submitted their bid proposals.

23 The qualified bid deadline was December 12th, and
24 we received multiple bids, complete with definitive
25 documentation. Certain bidders provided good faith

1 deposits, as required by the bidding procedures, proposing a
2 wide range of potential transactions and business
3 structures. These bids contemplate, among others,
4 individual asset purchases, as well bids acquiring the
5 entire retail platform, and providing additional value to
6 the Debtors' estate through customer migration, asset
7 management platforms, and distribution services structures.

8 Not all of the bids meet all of the Court approved
9 criteria and some have other deficiencies. Therefore, we're
10 going to use the upcoming weeks to work with our advisors
11 and engage with bidders to try to improve the bids, take the
12 more actionable, and ultimately into qualified bids.

13 At a high level, the customer migration structures
14 involve payment to the estates in exchange for migrating
15 customers and the company's cryptocurrency assets to the
16 buyers' platform. Customers who migrate would then receive
17 access to a percentage of the company's cryptoassets on the
18 buyers' platform.

19 In the asset management platform structure, the
20 acquirer would buy a significant portion of the company's
21 assets, other than those for a class of smaller holders who
22 are proposed to receive crypto and other consideration, and
23 then transfer the assets to a newly formed asset management
24 entity managed by the buyer. The company's creditors, whose
25 shares of assets are transferred to the acquirer, would then

1 receive tokens representing the value of the assets and
2 business operations in the newly formed entity, as well as
3 tokens representing a portion of the management fee paid to
4 the asset manager. And these new tokens would trade on the
5 blockchain.

6 Finally, in the distribution services structure,
7 the acquirer would purchase the company's assets and
8 transform them -- or transfer them, to their own platform.
9 The company's creditors would then receive access to a
10 prorated portion of the company's crypto tokens through the
11 acquirer's platform. Illiquid assets would be transferred
12 to special-purpose vehicles, with equity in the acquirer's
13 platform distributed to creditors.

14 Overall, I'm optimistic about the company's
15 options and look forward to working with the Debtors, the
16 community -- I'm sorry -- the Committee and other key
17 stakeholders to improve the bids as much as possible and
18 determine the best path forward.

19 And once we have a firmer idea of the path
20 forward, we intend to immediately engage with the regulators
21 to discuss our ideas and help address any questions or
22 concerns they may have.

23 At this point, there are still too many options
24 under consideration. We want to narrow the options a bit
25 before we go to the regulators.

1 MR. KOENIG: Thank you, Mr. Ferraro. Could you
2 now please provide an update on the company's efforts for a
3 standalone reorganization plan, what you referred to as
4 NewCo?

5 MR. FERRARO: Yes. To be clear, the NewCo plan is
6 still being formulated, as we negotiate with all parties in
7 interest. We are aiming to determine the best path forward,
8 be it in the NewCo plan or one of the sales options I just
9 mentioned. We are continuing to work with all parties to
10 file a disclosure statement and plan in advance of
11 exclusivity expiring in mid-February.

12 With the disclaimer and the Court's permission, I
13 would like to preview a high-level summary of the current
14 thinking of the NewCo reorganization plan.

15 Today's cryptocurrency market is very different
16 from what it was a year ago. The number of large
17 cryptocurrency platforms that are in distress or have filed
18 for Chapter 11 is significant. As a result, today's market
19 is all about transparency and trust.

20 To be successful, a cryptocurrency platform
21 establishes trust by solving investment needs with
22 transparency and accountability. Such a platform requires
23 proof of reserves, proof of liabilities, and onchain
24 investments. With that in mind, the NewCo plan involves a
25 creditor-owned wealth management platform that offers access

1 to independent crypto service providers, fund managers, and
2 an operating system that has onchain proof of reserves and
3 proof of liabilities. This transparency will allow the
4 company to effectively be audited in real time by anyone
5 with an Internet connection.

6 To implement the NewCo plan, qualified custodians
7 will manage all user assets. User deposits will be custody
8 and wrapped tokens will be minted and issued to the users.

9 Finally, virtual asset service providers such as
10 staking partners and liquidity partners will deploy assets
11 based upon the direction of the qualified custodian, via
12 direct requests and approvals from the users.

13 As with the asset management bid, we expect a
14 small class, or a class of smaller holders, less
15 sophisticated investors would not participate in this
16 venture and would instead receive a distribution of crypto
17 and other value.

18 While the platform will cater to a wide array of
19 customers, ranging from newcomers to high-volume leveraged
20 traders, we anticipate our key customers will be mass-
21 affluent to high net worth individuals, and customers that
22 have a long-term and optimistic view of the cryptocurrency
23 market.

24 MR. KOENIG: Thank you, Mr. Ferraro. Finally, can
25 you please provide an update regarding the company's current

1 mining operations?

2 MR. FERRARO: Yeah. We are continuing to build
3 out our mining operations and improve efficiencies. Mining
4 has generated positive operating cashflows and positive
5 EBITDA every month this year in 2022. It is important to
6 remember that we curtail our miners if the marginal cost of
7 mining pit is greater than the (indiscernible). And this is
8 done at a site level.

9 We have completed construction, energization and
10 deployment of rigs at three of the four proprietary mining
11 sites. All four of these sites are located in the state of
12 Texas. Garden City, our first site to go online, has been
13 mining bitcoin since September. And the site has high
14 uptime and current produces around 30 bitcoins per month.

15 The other two, Rebel and Stiles, both went online
16 in mid-December. And the final site, East Stiles, we have
17 completed the transmission and distributional work, along
18 with the construction of two of the four buildings. The
19 site is expected to go online in early to mid-first quarter,
20 completing the 87 megawatt proprietary sites.

21 To be clear, mining is an important asset in any
22 reorganization and restructuring option, including the sale
23 or (indiscernible) reorganization.

24 MR. KOENIG: Thank you, Mr. Ferraro. That
25 concludes the update, unless Mr. Ferraro has anything else

1 that he liked to add.

2 MR. FERRARO: No, nothing more, Mr. Koenig. Thank
3 you. I would like to say thank you to Your Honor for giving
4 me the opportunity again to provide an update to the Court.
5 And unless Your Honor has any questions, this concludes my
6 update.

7 THE COURT: Let me ask this. Do any of the bids
8 include bids for the mining assets?

9 MR. KOENIG: They do, Your Honor. Yes.

10 THE COURT: Are there separate bids for the mining
11 assets, or inclusive of the rest of the platform?

12 MR. KOENIG: Both, Your Honor. Both individually
13 and as part of a more holistic sale transaction.

14 THE COURT: All right. So, if you would, Mr.
15 Koenig, give me an estimate of the timing of going forward
16 with the sale process. The original date has been put off.
17 The Debtors' and its advisors, the Committee and its
18 advisors, from reading the docket, have been conferring.
19 What is your estimate of when the marketing and also the
20 standalone process will go forward? Obviously, exclusive --
21 you have a date when you've committed to submit a proposed
22 standalone plan. But give everyone a sense of the timing
23 now.

24 MR. KOENIG: No, of course, Your Honor. What
25 we've been doing since receiving the bids, the final bid

1 deadline, is continuing to work with the bidders to try to
2 improve the bids, make them into qualifying bids, and of
3 course the best bids possible.

4 We're going to continue to work with the bidders
5 and the Committee over the coming weeks to select a path
6 forward. We currently expect that we will announce
7 something in early to mid-January as far as the path that
8 we're pursuing. And then we'll take that announcement and
9 build it into the formal documentation, a Chapter 11 plan,
10 asset purchase agreements, whatever the case may be. So we
11 expect that this process is going to come to a head in the
12 coming weeks, in the beginning to middle of January.

13 THE COURT: All right. Anything you want to add
14 at this point, Mr. Koenig?

15 MR. KOENIG: No, thank you, Your Honor. That
16 concludes the update.

17 THE COURT: All right. Let me ask for the
18 Committee, someone on behalf of the Committee, if you would
19 address the issues raised by Mr. Koenig and Mr. Ferraro and
20 the update, and where the Committee sees this case going.

21 MR. PESCE: Sure. For the record, Gregory Pesce,
22 White & Case, on behalf of the Committee. Can you hear me,
23 Your Honor?

24 THE COURT: I can very well. Thank you.

25 MR. PESCE: Yes. So, prior to the bid expiration

1 date, the Committee had been speaking directly with some
2 bidders. We've been speaking collectively with some bidders
3 on behalf of the company and steering other parties to them.

4 You know, as Mr. Koenig said, we received a number
5 of proposals. They're all very -- the external proposals
6 are all very promising, and then we're in Ewing to do some
7 work with them on the internal reorganization concept.

8 After speaking with a number of the bidders, we
9 felt that some more time was needed, particularly given the
10 Christmas holiday and some other that work that we needed to
11 do there. As Mr. Koenig said, we are spending a lot of time
12 over the holiday to try to figure out the path here.

13 You know, we've had a pretty long meeting. We've
14 had pretty long meeting several days each of the last two
15 weeks to talk about potential plan structures. We're going
16 to have another meeting today or tomorrow to talk about it
17 as well. And it's our hope, like Mr. Koenig said, that we
18 can get something chosen by the beginning or middle of
19 January so that it could be socialized. And then we can
20 include the feedback from the examiner's report, if any is
21 relevant, on January 17th.

22 But again, time is not our friend here. We really
23 want to move fast. So, if these external proposals or the
24 internal reorganization that's being contemplated don't
25 work, or they're inconsistent with our timeline or our

1 budget here, the Committee is going to be ready to move
2 forward one way or the other in the middle of February with
3 an option that doesn't require an outside bidder or internal
4 reorganization. Because people need to get their recoveries
5 here sooner than later. Many people are very cognizant, or
6 really depending on the money, and the coins they put on
7 Celsius.

8 So, to date we've gotten a lot of cooperation from
9 the Debtor. We're continuing to give them leads. And as
10 you will come to us directly, we try to look them into that
11 process, get them under NDAs, et cetera. And we'll talk
12 more about this in the mediation motion, I'm sure. But from
13 our perspective, the process is working as intended. You
14 know, regrettably, it's long and expensive, but we're making
15 -- everyone is moving as quickly as we can under these
16 circumstances.

17 THE COURT: So let me -- this really goes for all
18 of you, but for the Debtors and the Committee, and that
19 really has to do with interacting with the regulators. It's
20 been clear from the start of this case, and actually before
21 the start of the case, the Debtor had changed its business
22 model in light of regulatory concerns that had arisen.

23 And, you know, the sooner -- and I can understand
24 it may be premature, at least for over the next few weeks,
25 to really engage with the regulators. But I really think

1 that whether you're talking about a standalone plan or a
2 sale process, it isn't going to go anywhere unless there's
3 been a full exchange with the regulators to get their input.
4 And so I am concerned that that appears not to have happened
5 so far.

6 MR. PESCE: Your Honor, it's Greg Pesce, from
7 White & Case, if I may jump in there, just to give a little
8 bit of context on that. And I was going to speak about this
9 at the mediation motion, but I'll move that forward.

10 So a group of people from my firm, M3 and
11 Elementus have been speaking with the regulators with some
12 regularity. We had an hour-long meeting last Thursday the
13 15th, in fact, to talk about the process and to give a
14 preview of some of the bids that have -- you know, concepts
15 that have been received and what we're thinking about there.
16 And it's our expectation that we're going to have to talk to
17 them a lot more.

18 But your point's not lost on us. We're urging
19 everyone to talk more and share information with the
20 regulators. I understand some regulators were not part of
21 that call or may feel that they need to be more involved.
22 We're happy to meet with anyone and we'd urge the Debtor to
23 do the same with them as they develop what path they want to
24 do here.

25 MR. KOENIG: And Your Honor, it's Chris Koenig for

1 the Debtors, just to add on to what Mr. Pesce said.
2 Obviously, regulatory compliance is a top priority for
3 Celsius. We're not going to get out of this case without
4 having the regulators onboard. We're laser focused on it
5 and have been. We have working groups that have worked with
6 the Committee professionals to try to narrow the issues so
7 that when we -- when we're ready to go to the regulators, it
8 can be efficient as possible

9 And as Mr. Ferraro explained in his update, we
10 intend to move quickly to speak to the regulators as soon as
11 we narrow the options a little bit. There's obviously a lot
12 of different structures that are currently on the table.
13 And once we have a little bit more clarity about the path
14 forward, we're going to need to engage with the regulators
15 to make sure that we take care of this as soon as possible
16 and we address whatever questions and concerns they have.
17 So it's certainly not lost on us either, Your Honor.

18 THE COURT: All right. Two of the people on
19 behalf of the regulators who have appeared regularly, and I
20 want to ask them -- not intending to exclude any of the
21 other regulators' counsel -- but let me ask Ms. Milligan
22 first and then I'm going to call on Ms. Cordry.

23 MS. MILLIGAN: Thank you, Your Honor. Layla
24 Milligan with the Texas Attorney General's Office on behalf
25 of the Texas State Securities Board and Texas Department of

1 Banking. We have been in communication with the Committee
2 and have been given basically general updates as far as
3 possibilities. We have not been in regular communication
4 with the Debtors. I understand that they are planning to
5 communicate with us once they get a better footing of where
6 they're going.

7 We are concerned because the company is not
8 regulatorily compliant in Texas and our understanding is
9 they are not in compliance in a number of other states. The
10 process of becoming regulatorily compliant is not an
11 immediate one. So it is a process that takes time and
12 effort. And we are not -- we do not have information about
13 how that process will work if there's a NewCo that intends
14 to have an investment vehicle associated with it. That
15 would have to be regulatorily compliant. If they sell to
16 another investment vehicle, they would have to be
17 regulatorily compliant. And these things take time.

18 And so, if there is a limited runway and there's a
19 decision made and there's 30 to 60 days left to get
20 everything in alignment, it just may not be possible. So we
21 certainly as much money to be returned to investors as
22 possible. And we will work as quickly as we can on the side
23 of the regulatory bodies.

24 But we do have concerns about what the Debtor
25 intends to do. And the sooner we can start those

1 discussions, the better, as far as we're concerned.

2 THE COURT: Thank you. Ms. Cordry, do you want to
3 be heard?

4 MS. CORDRY: Yes. I would basically echo what Ms.
5 Milligan said. We did ask for the call last week with the
6 Committee and I basically, when I was asking for it said,
7 look, is there someplace this company can go? And is there
8 someplace that it can end up with in the kind of time period
9 it has?

10 The discussion we had with them was promising.
11 They were moving forward with these various bids and so
12 forth. That's one of the reasons you'll hear, of course,
13 while he took the position we did on the mediator motion at
14 this moment.

15 I, again, would agree with what Ms. Milligan said,
16 which is saying you're going to become regulatorily
17 compliant is not a matter of just saying, okay, I'll go down
18 to the driver's license bureau and get my driver's license
19 today. It is a licensing process that to the extent they
20 are selling securities, which in many respects most of the
21 time they may well have to do, it's a weeks to months-long
22 process, not a days process kind of thing.

23 So that's one reason why we do have a great deal
24 of concern. The sooner they can talk to us, the sooner they
25 can start any of these processes, the better. It may be

1 possible they can set up some kind of investment vehicle
2 with accredited investors only that requires less regulatory
3 compliance issues with us. We wait to see that. We're
4 interested and were happy to see that there's some process
5 going forward.

6 We appreciate Your Honor's attention to keeping
7 their feet to the fire on these issues. Thank you.

8 THE COURT: Okay. Any of the other regulators
9 want to be heard? This is not intended as a full-blown
10 analysis of these issues. I single out the issue with the
11 regulators. I mean, Mr. Ferraro and Mr. Koenig raised it;
12 Mr. Pesce raised it.

13 But I'm keenly aware that an exit out of this
14 bankruptcy, either standalone or sale, is going to require
15 time for the regulators to evaluate what's proposed. So the
16 sooner the Debtor and Committee can engage in real serious
17 discussions with the regulators, the more likely to have a
18 successful exit. Okay.

19 Do any of the other regulators' counsel wish to be
20 heard? Yes. I see a hand raised.

21 MR. BERNSTEIN: Good morning, Your Honor. Jeffrey
22 Bernstein, McElroy Deutsch Mulvaney & Carpenter, for the New
23 Jersey Bureau of Securities. I also was able to participate
24 in the call with the Committee last week, and I echo the
25 thoughts of Ms. Milligan and Ms. Cordry about the importance

1 of the regulatory scheme. And we appreciate the comments of
2 Your Honor, the Debtor and the Committee. And it does take
3 time. And we certainly intend to cooperate to the extent
4 that something can be facilitated. But it does take work.

5 Thank you, Your Honor.

6 THE COURT: Thanks, Mr. Bernstein. Ms. Rood?

7 MS. ROOD: I would just -- Jennifer Rood, for the
8 Vermont Department of Financial Regulation. I'd echo the
9 comments of Ms. Milligan and Ms. Cordry. And the only other
10 thing I'd add is that in addition to time to become
11 regulatorily compliant, it takes robust financial
12 disclosure. And we're concerned that not only does the
13 company have limited liquidity, but they haven't provided
14 even so much as a basic liquidation analysis, much less the
15 kind of robust financial disclosure that would be required
16 in connection with the securities offering.

17 So we are concerned about that. We are concerned
18 about whether they have enough runway to get all this
19 completed.

20 THE COURT: Thank you, Ms. Rood. Ms. Thomson?

21 MS. THOMSON: Good morning, Your Honor. This is
22 Lucy Thomson. I'm the Consumer Privacy Ombudsman. Thank
23 you for raising the question about regulatory involvement.
24 I've been waiting to hear more details from the Debtors
25 about the plan, and it's very helpful to hear what they plan

1 today.

2 There are many issues on the privacy front about
3 which accounts will be sold, particularly with respect to
4 the closed accounts, and what kind of notice those investors
5 will receive, and how the vast amount of personal data will
6 be handled. So I look forward to calls with the Debtors and
7 the Committee to address some of those issues.

8 THE COURT: Thank you very much, Ms. Thomson. All
9 right. So let's move on on the agenda now to the contested
10 matters, Mr. Herrmann's motion to appoint a mediator. Mr.
11 Herrmann, do you want to argue first?

12 MR. HERRMANN: Yes. Thank you, Your Honor. For
13 the record, Immanuel Herrmann, pro se creditor. Can you
14 hear me?

15 THE COURT: Yes, I can. Go ahead.

16 MR. HERRMANN: Okay, great. Thank you, Your
17 Honor. I filed my motion for a Chapter 11 mediator because
18 I believe it would move these cases forward, address major
19 legal issues, and get key parties to the negotiating table,
20 such as earn customers, loans and custody, and that it would
21 get us out of Chapter 11 faster.

22 As of this morning's hearing, the largest
23 constituencies support mediation, including a number of our
24 own customers, the loans Ad Hoc and the custody Ad Hoc.
25 These are the biggest constituencies in the case and have

1 the most legal issues pending before this Court.

2 The Debtor and the UCC say we aren't ripe for
3 mediation yet. That mediation isn't yet useful and that it
4 will add more costs at this time, or that mediation should
5 just facilitate the existing parties who are already
6 talking; in other words, the Debtor and the UCC to continue
7 talking.

8 I disagree and custody and loans and several earn
9 customers disagree. I believe it will resolve -- it will
10 help facilitate the resolution of key issues, save estate
11 dollars, and help get us out of Chapter 11 faster and for
12 less money.

13 The states do not want to be compelled to attend
14 mandatory mediation at this time. I addressed this in my
15 reply. I agree with their arguments that they do not need
16 to attend mediation yet. I do, however, believe their
17 presence could be important soon for some of the issues that
18 came up earlier and some of the reasons that came up earlier
19 in this hearing.

20 Any plan, especially a reorganization plan, will
21 need -- a standalone reorganization plan will need input
22 from regulators. My view, Your Honor, is that the major
23 parties in this case need to start resolving their issues
24 sooner rather than later, and that mediation is a more
25 efficient way to do it than litigation.

1 The process of selecting a mediator, onboarding
2 him or her, and all of that, will take some time, and
3 finalizing the issues as well. I anticipated this time lag
4 with my motion, which is why I filed it when I did.
5 Specifically, key dates are coming. January 3rd is the bar
6 date, but we have not yet resolved the key issue of which
7 entities customers have claims against, or if cryptocurrency
8 claims should be converted to dollars.

9 There will be a number of disputed claims types
10 coming, such as suspended accounts, pending, returns
11 collateral, and liquidated loans, and the fight with
12 preferred shareholders is still scheduled to take place and
13 is unresolved.

14 January 10th is now the line for an auction for
15 retail assets at the sale hearing on January 22nd.
16 Meanwhile, in between those two dates, on January 17th the
17 examiner's final report will come out. And then the
18 Debtors' exclusive periods ends faster than we all imagined,
19 February 15th.

20 So, by the time the sale hearing happens on
21 January 22nd, in my view the parties should be in mediation.
22 Having a short period of mediation before the end of the
23 exclusivity period and while we have bids submitted, I
24 believe would help the mediation parties resolve key issues
25 while we evaluate whether there is a viable plan going

1 forward, either through a bid or a standalone
2 reorganization.

3 To be clear, my mediation proposal is not intended
4 to interfere with any sales process or to shorten the
5 exclusivity period in any way, which I supported extending,
6 provided that there was a lot more communication with the
7 creditors.

8 After there is a bid or we organization plan,
9 maybe peace breaks out between the constituencies. Maybe we
10 won't need mediation. I'm betting that we will, however.
11 And realistically, to make that happen, we need to get
12 started on putting it together now.

13 So, Your Honor, I urge you to order a mandatory
14 mediation at a minimum between the Debtors, the UCC, and the
15 representatives of the biggest creditor constituency groups,
16 which include earn, loans and custody, potentially including
17 the preferred shareholders as well, depending on the results
18 of the briefed legal issue.

19 I believe that other parties, including the
20 regulators, can join, if and when it makes sense, in
21 particular if the mediator encourages their attendance.

22 THE COURT: All right. Thank you, Mr. Herrmann.
23 All right. So the Court, in addition to reviewing Mr.
24 Herrmann's motion, there have been numerous responses,
25 joinders, or limited objections that have been filed.

1 Rather than hearing those who want to argue in support -- I
2 have their positions; I've read their position statements --
3 let me hear first from the Debtor and then form the
4 Committee.

5 MR. KOENIG: Thank you, Your Honor. Again, it's
6 Chris Koenig, Kirkland & Ellis, for the Debtors. Your
7 Honor, as reflected in our objection that we filed at Docket
8 1738, the Debtors oppose the motion. The Debtors generally
9 do not believe that mediation will move these cases forward
10 at this time.

11 On the contrary, as Mr. Ferraro just explained,
12 the Debtors are moving towards the conclusion of their dual
13 track sale and marketing process and standalone
14 reorganization efforts, and we expect to work with the
15 Committee to improve the bids and select a value-maximizing
16 option in the coming weeks. We also expect to file a
17 Chapter 11 plan before exclusivity expires on February 15th.
18 For that reason, we believe that mediation is premature.
19 We believe that the Debtors, the Committee and the other
20 parties should be focused on selecting the path forward,
21 improving the bids, engaging with regulators and other
22 parties.

23 And then, at that time, if there are disputes that
24 remain, perhaps mediation would be more appropriate for
25 another day. But that time is, plainly, not now, as is

1 accurate in the objections of the Committee and the State
2 regulators.

3 I don't want to duplicate Mr. Ferrara's update on
4 the business, but just a few key points for the Court's
5 consideration. We think the mediation would be duplicative
6 and premature. There are a few unique circumstances at play
7 here, that would reduce the utility mediation, including,
8 number one, the examiner's report is coming out next month,
9 on January 17, that would likely shape the parties' views
10 and mediation, may narrow the issues; parties will need time
11 to process the mediator's report -- sorry, the examiner's
12 report, and evaluate their positions in light of her
13 findings.

14 Several of the matters under the proposed
15 mediation are already under advisement with the Court, have
16 been fully briefed and argued. The parties will review the
17 Court's rulings in due course and assess their positions.
18 And briefing on other matters is already underway. The
19 dispute with the preferred equity holders, Your Honor,
20 entered a schedule, I believe it was just yesterday, and
21 we're proceeding forward on that basis.

22 We also think that the scope of the mediation is
23 extremely broad and would not be productive. Mr. Herrmann's
24 motion describes a non-exclusive list of ten proposed
25 mediation topics. These topics include broad topics such as

1 what happens with clawbacks? What happens with CEL Token?
2 How do we get to a plan that will ultimately be popular with
3 creditors? These topics, you know, may not be answerable in
4 mediation and certainly are not ripe at this time. Even
5 assuming that Mr. Herrmann's motion is granted as he would
6 like, we wouldn't be able to resolve these issues with Mr.
7 Herrmann and a few other pro se creditors at the table.

8 Take clawbacks, for example. These preference
9 issues are complex issues in first impression, in the crypto
10 currency area. And each potential defendant would have its
11 own rights and arguments regarding clawbacks. It's
12 impossible to think about how we could resolve clawbacks
13 generally in a mediation.

14 Lastly, Your Honor, we're mindful that nothing we
15 can say in the moment will erase the criticisms that are on
16 social media and elsewhere about the Debtors and their
17 advisors. To be clear, the company, and its advisors are
18 doing its best to be as responsive as possible to
19 communicate directly with individual account holders.
20 Hopefully, Mr. Ferrara's presentation this morning provided
21 some additional color and transparency to account holders.
22 We're committed to continuing to provide this increased
23 information as we work through the process and select the
24 value maximizing path forward.

25 THE COURT: Thank you.

1 MR. HERRMANN: Thank you.

2 THE COURT: Let me hear from the Committee.

3 MR. PESCE: Thank you, Your Honor. Gregory Pesce,
4 White & Case, on behalf of the Committee.

5 The mediation motion is, no doubt, well
6 intentioned. These cases have gone on a lot longer than we
7 all would have liked. They cost a lot more money. And, in
8 particular, the information that many users might have been
9 used to getting before the bankruptcy through social media
10 and otherwise, is very different than what we have here.

11 So, all that being said, we think that there's
12 always -- to the extent the motion is seeking more
13 information, the Committee is open to trying to facilitate
14 having more information. You know, to date, we've done a
15 lot on this effort. The Debtor, last week, filed a new
16 point report. Mr. Ferraro is here today. The Debtor filed
17 a somewhat unique bid update last week, and then more
18 information was provided today. The Committee, for its
19 part, is doing town halls, and we've spent over 1,000 hours
20 talking to pro se creditors to contact us.

21 So, we've done a lot on the communication front,
22 but Mr. Herrmann's points are well taken, that we, and we
23 will urge the Debtor to try to make more communication
24 available to the users, and obviously, as mentioned earlier,
25 to do more with the regulators.

1 Insofar as, you know, dealing with the case
2 itself, and mediation, in our view, the process, as
3 difficult and long and expensive as it may be, it's working
4 as Congress intended, if not as Mr. Herrmann had hoped. The
5 UCC is the constituent for all account holders, and we're
6 doing everything we can to help account holders. We
7 understand some positions he's taken are controversial.

8 That said, we hope the account holders don't scorn
9 is and the resources that we have here. We are here and
10 available to help the account holders to get their position,
11 then try to use them to influence the process.

12 To that end, the process among the different
13 organized groups is also working as intended. Litigating
14 issues are getting briefed. I expect some of them will soon
15 start to get decided. And the organized parties, the
16 Debtor, the Committee and various ad hoc groups are all
17 talking about different ways we might resolve different
18 aspects of the case. I can't go into detail about what that
19 might involve, but we're all cognizant of the cost and time
20 associated here in trying to bring that to closure.

21 So, all that being said, we don't think mediation
22 is right today, but we do think it could be right in the
23 not-to-distant future. But right now, what we're focused
24 on, rather than choosing a mediator and using the holiday
25 weeks and beginning of the new year, we want to focus, like

1 I said earlier on, working with the Debtor on its plan. And
2 if that doesn't work, putting forward our own plan once we
3 have the input from the examiner's report and the other key
4 input that you mentioned today. So, I thank you for your
5 time today, Your Honor.

6 THE COURT: Thank you Mr. Pesce. Mr. Herrmann, do
7 you want to respond?

8 MR. HERRMANN: Yes, Your Honor. A couple of
9 things: One, as I said, I believe that between now and
10 January 17, that the mediation issues become more clear. In
11 terms of whether earn customers, you know, some pro se earn
12 customers can represent earn in -- you know, obviously, we
13 can only represent ourselves. I will say, there have been
14 some issues that have come up with the ad hocs and whether
15 they represent anyone more than their members. But I think
16 that what we can do in mediation is work through some of the
17 key issues. And I also think if it were critical to retain
18 counsel for mediation that we could talk about that or make
19 that happen.

20 So, I also believe that, you know, I don't think
21 that -- I didn't file this motion to say we will resolve
22 every issue that I listed in the motion in mediation. I
23 filed it to start a conversation, more or less, about
24 mediation. And, you know, I understand that the issues may
25 shift, but I think that, you know, by the time we actually

1 get going with mediation which I think will take weeks. And
2 so, when the other parties are arguing that mediation, you
3 know, may be later, what are we going to do? File a motion
4 for mediator on an expedited timeline after a plan comes out
5 and then we're going to have to select the men? I think it
6 would be better, just in case, to have a candidate lined up,
7 just like when you look at the strategies. They have dual
8 track strategies, right. They're working on stand-alone
9 reorg and a sales process at the same time. So, this is
10 really similar to that. I think we should have a mediator
11 as a potential strategy lined up and ready to go. It seems
12 to me a quite low-cost thing to do. And you know, I'll note
13 in the loans joinder that came in this morning, there are
14 some key issues, like issues between earn and borrow, the
15 two largest constituents in the case. I know there's been
16 some talk in public even, of selling the loans book, for
17 example, and some claims that loan holders have.

18 I don't know what the proposal is by the parties
19 to work out those issues. We don't have a schedule for
20 those. But if they want to sell the loan book, for example,
21 separately, and they want earn customers, generally, to
22 support that, you know, conversations would be helpful, that
23 include legal and financial analysis of what that would look
24 like.

25 And then, with custody, it seems to me that it's

1 going to be quite a long time before the accounts above
2 \$7,575 are released. And then, you know, that there's
3 hundreds of thousands of dollars, or more, in potential
4 litigation coming on many issues.

5 And then, there's issues that, you know, that are
6 called corner-case issues, but actually could be larger than
7 withholds. So, like for example, collateral that was
8 returned to earn accounts, I believe is probably larger than
9 withhold. We haven't done discovery on it. So, there's a
10 lot of issues that may not --

11 THE COURT: I'm going to ... let me give you one
12 more minute.

13 MR. HERRMANN: Okay. I mean, actually -- thank
14 you. I don't have a whole lot to say. I mean, are there
15 any questions for me or anything else that would be helpful
16 to hear about --

17 THE COURT: No. I'm going to deny the motion
18 without prejudice. I think there are already many issues
19 fully briefed and argued awaiting decision. There are
20 schedules in place for other issues to be addressed that are
21 important issues. I think the examiners, the filing of the
22 examiner's report, as well as more concrete information
23 about a stand-alone plan or sale, will help make the issues
24 much more concrete, and the Court could decide then, with or
25 without a motion, Mr. Herrmann, whether or not to appoint a

1 mediator to try and resolve additional issues. I think it's
2 premature until some of these additional issues become
3 clear.

4 I raised the issues today about the regulatory
5 issues, either with a stand-alone plan or with a sale. The
6 regulatory issues are going to be extremely important, and
7 it's going to require more discussion between the Debtors,
8 the Committee and the regulators, to try and push forward on
9 that. So, I think it's premature, at this stage, to put a
10 mediator in place.

11 I'm also concerned, mediators can't deal, Mr.
12 Herrmann, with 300,000 account holders. Ordinarily, a
13 mediation is with a relatively limited number of represented
14 parties. A free-for-all in mediation simply is not going to
15 work. But I think there are too many issues that have to
16 get addressed between now and the end of January, to make
17 mediation meaningful.

18 I would say this, Mr. Herrmann, that if a decision
19 is reached to push forward with mediation, yes, there will
20 have to be discussion about the selection of a mediator, but
21 I don't believe it's going to be a months-long process to
22 get it in place and started.

23 So, I respect you for filing the motion. I think
24 negotiated consensus is the best way to resolve the issues
25 in this case. There are a lot of issues, as I said already,

1 that are already pending and awaiting decision by the Court,
2 and more that are scheduled. So, that's how we're going to
3 proceed with that. So, I don't want to hear anything more
4 today on the mediation issues.

5 Let's go forward with the agenda. If we will, the
6 next matter on the agenda is the Ernst & Young retention.
7 Who is going to argue for the Debtor?

8 And here, I see, while the objection deadline had
9 been pushed, there have been no objections filed. Mr.
10 Koenig or whoever else is going to argue for the Debtor, if
11 you could just update me on that.

12 MR. KOENIG: Thank you, Your Honor. Chris Koenig
13 and Kirkland & Ellis for the Debtors. We're pleased to
14 report that we worked out the issues with Ms. Cornell in her
15 office. We filed a revised proposed order that reflects her
16 input and her feedback. I believe we're resolved, but
17 certainly, Ms. Cornell can speak for herself. I believe
18 we're resolved on the Ernst & Young application.

19 THE COURT: All right, anybody else want to be
20 heard? As I said, there were no objections that were filed.
21 Ms. Cornell, do you want to be heard?

22 MS. CORNELL: For the record, Shara Cornell on
23 behalf of the Office of the United States Trustee. I just
24 want to say that, you know, both Kirkland and Ernst & Young,
25 you know, we worked really diligently to get this across the

1 finish line, especially when dealing with an international
2 firm. Sometimes, it can be difficult, so I just want to let
3 the Court know that everyone really worked hard on this one.
4 So, thank you.

5 THE COURT: All right. So, that's granted, the
6 order can be entered. Next on the agenda is the retention
7 of Gornitzky & Co., the Israeli counsel.

8 CLERK: Sorry, Judge. The order was entered this
9 morning.

10 THE COURT: Okay, then we don't have to deal with
11 that, okay. I do have -- Mr. Koenig -- thank you, Deanna.
12 The Court is in receipt of the notice of filing of revised
13 proposed order authorizing the Debtors to reopen withdrawals
14 from certain customers with respect to certain assets held
15 in the custody program and withhold accounts and granting
16 related relief. So, the revised proposed order was filed
17 yesterday as part of ECF 1755.

18 Mr. Koenig, could you address that, or one of your
19 colleagues?

20 MR. KOENIG: Yeah, no, absolutely, Your Honor,
21 thank you. So, we worked with the Committee and the two ad
22 hoc groups following the hearing that we had on December 7
23 in person before Your Honor, to revise the order per the
24 Court's comments at the hearing. We've drafted the order to
25 be responsive and flexible to however Your Honor rules, on

1 the issue of the custody wallets. And in brief, that's
2 whether the 6 percent aggregate shortfall of what's actually
3 in the custody wallet, matters for purposes of whether the
4 custody assets are property of the estate or not.

5 We met and conferred with the other parties
6 extensively, to try to reach a resolution of this issue.
7 But given the differences in opinion on this issue between
8 the parties, and the importance of distributions in this
9 case, we were able to reach a consensual resolution. But
10 the parties, of course, all committed to abide by whatever
11 Your Honor rules on that issue. And the order is drafted in
12 a flexible manner so that however Your Honor rules, we will
13 abide by it, and the schedule that we file will take into
14 account Your Honor's ruling.

15 THE COURT: Okay. So, my chambers received an
16 email from a creditor, Chase Marsh. And I don't know
17 whether your office received it as well or not. And it --
18 I'll just read part of it: ":I am an involuntary creditor
19 in the subject Celsius case. Please forgive me for not
20 knowing the exact protocols to submit this request, who to
21 copy, or if my procedural understanding is not correct. And
22 basically, it's asking more time to review the order, which
23 was just filed yesterday, the revised order."

24 Did you receive the Chase Marsh email?

25 MR. KOENIG: Your Honor, I was copied on that

1 email late last night. Yes.

2 THE COURT: So, I don't know whether, is Mr. Marsh
3 a custody or account holder who would receive a distribution
4 under this order? Obviously, from the hearing, and what was
5 what I indicated would happen, this would only resolve those
6 against whom preference actions could not be brought,
7 because they were below the threshold amount. And I don't
8 know where Mr. Marsh is in this mix.

9 MR. KOENIG: No, that's right, Your Honor. We
10 requested data from the company to confirm. And as of this
11 morning, we hadn't received that back yet, so we were
12 checking back. But I regret that I don't have the answer
13 for Your Honor, just given the time.

14 THE COURT: All right, Mr. Marsh, you have your
15 hand raised. I'll listen you now, please.

16 MR. MARSH: Hi, good morning, Judge Glenn. Chase
17 Marsh, I'm a pro se creditor, as you read.

18 My concern that this was not properly docketed
19 and, as Mr. Koenig had mentioned, there is a lot of sort of
20 wiggle room within the redlines, that we have not had a
21 chance to fully review. I am an earn customer and a custody
22 customer. I would not be subject to the preference issues.

23 However, there are several other items that were
24 introduced, such as paying gas fees, which were never part
25 of the Debtors' program to begin with. In fact, their

1 stating was that, "Try us. If you don't like it, you can
2 get your money off for free. We won't charge you." And
3 now, if you're going to charge me gas fees, you got to go
4 back and charge everyone else gas fees as well, that took
5 their money off the platform.

6 So, I know that's a side issue, but there's a lot
7 of side issues in these redlines that I hope can be
8 considered in due course. That's all.

9 THE COURT: Thank you, Mr. Marsh. Mr. Koenig,
10 could you -- I did see that in the revised order. It has
11 provisions relating to -- gas was among them. And that was
12 not discussed at the hearing.

13 MR. KOENIG: Yeah. Thank you, Your Honor. Again,
14 Chris Koenig. So, that paragraph is paragraph 4 in the
15 revised proposed order. So, gas fees are the transaction
16 costs that are associated with transferring cryptocurrency.
17 Mr. Marsh is right that prepetition in the ordinary course
18 of business, the Debtors didn't charge gas fees. In the
19 motion, and in the original version of the order, we did
20 seek authority to charge gas fees.

21 The reason for that is we want to be as equitable
22 as possible. Gas fees have to be paid. The question is,
23 who pays for them? So, does the customer who is receiving
24 cryptocurrency out of the estate, should they pay the
25 transaction cost to return them the funds, the

1 cryptocurrency? Or should that cost be borne by the estate?
2 Because if it's borne by the estate, effectively, that's
3 less -- that's going to be less assets for the rest of the
4 customers to receive from the Debtors' estates. And those
5 customers aren't receiving anything.

6 So, what we thought was the most equitable thing
7 to do, was to charge the gas fees against the customers that
8 are actually receiving the distribution, as opposed to
9 charging the customers that are not.

10 I'd submit that the changes in paragraph 4 are
11 more clarifying in nature than a total shift of position.
12 The motion was clear on this from day one.

13 THE COURT: Can you tell me; can you estimate the
14 math? Because paragraph 4 talks about gas fees or
15 transaction costs, or a fee approximating such cost.

16 MR. KOENIG: Yeah.

17 THE COURT: Is there an estimate of what those
18 costs would be?

19 MR. KOENIG: Those costs are different on a coin-
20 by-coin basis, Your Honor. Stable coins, for example, have
21 a very low transaction cost. It's de minimis. It's
22 probably a rounding error. There are other coins for which
23 the gas fees are more significant, like bitcoin. But the
24 gas fees, they actually vary over the course of the day.
25 It's not like the fee is, you know, a certain percentage or

1 a certain dollar amount. It varies depending on the amount
2 of transactions that are occurring on the network and so on
3 and so forth.

4 You know, the fees are certainly very small
5 compared to the distributions. Some of them are very de
6 minimis, some of them are, you know, several percentage
7 points to be sure. But I don't have a -- you know,
8 summarizing all of the gas fees would be impossible in this
9 setting, Your Honor.

10 THE COURT: Let me hear from counsel for custody
11 and withhold, if they want to address what's in this revised
12 proposed order.

13 MR. KOTLIAR: Good morning, Your Honor, Bryan
14 Kotliar, of Togut, Segal & Segal, counsel for the ad hoc
15 group of custodial account holders. Can Your Honor hear me
16 okay?

17 THE COURT: Yes, I can, go ahead.

18 MR. KOTLIAR: So, we negotiated fairly extensively
19 with the Debtors and the Creditors Committee and withhold on
20 the form of this revised order. Obviously, there's one big
21 change to it that we'd love to make so that it would apply
22 to all custody assets. But we know that, as a result of the
23 last hearing, that's not going to happen.

24 So, taking into account the realities of where we
25 are in the case, it was really important to us to get an

1 order on file that got coins back to people as soon as
2 possible. The gas fees were in the original proposed order
3 with the motion. I don't think that it was described in the
4 motion, but we understand, as Mr. Koenig explained, that gas
5 fees are just a function of what happens when you transfer
6 cryptocurrency. And I think we were happy enough to get our
7 cryptocurrency assets back, if that was the case, that we
8 were okay with the gas fees. We were okay with the
9 explanation that Mr. Koenig gave about the language that was
10 added about, or similar other transaction fees, because that
11 to us was a change. But we became comfortable with it.

12 THE COURT: Could you give an estimate of what
13 those fees would be?

14 MR. KOTLIAR: I don't know what the fees would be
15 other than that they're often de minimis, but they vary on a
16 case-by-case basis throughout the day.

17 THE COURT: All right. Thank you. Does counsel
18 for the Withhold Ad Hoc Committee want to be heard.

19 MS. KOVSKY: Good morning, Your Honor, Deb Kovsky,
20 for the Withhold Group. I'll just echo what Mr. Kotliar
21 said. Unfortunately, the transaction fees have to come from
22 somewhere, and imposing those fees as an additional cost on
23 other customers didn't seem to be fair. So, we agreed that
24 this was probably the most equitable outcome.

25 THE COURT: All right. I understand Mr. Marsh's

1 concern. This was included in the original motion, although
2 not in -- it's been clarified in the order. I think it is
3 extremely important, and I've thought so since day one, that
4 every -- I'll say dollar, but value -- that can be returned
5 to account holders sooner rather than later is important.
6 The issue about who bears the cost of these transaction fees
7 should the creditor body at large, who's not receiving
8 anything, in effect, bear a part of that cost. I understand
9 the argument why it should be those who are getting the
10 funds back.

11 So, I'm going to approve the revised proposed
12 order submitted in Word format, Mr. Koenig, and it will
13 promptly be entered. Please, I would like to receive a
14 status report when the distributions are made. You don't --
15 well it should, there should be a report filed that
16 indicates the creditor names, no other identifying
17 information, but the creditor names and the amount or
18 amounts that have been distributed to them after the
19 distributions are made.

20 MR. KOENIG: Thank you, we'll be sure to do so.
21 And just to provide an update for everybody listening and
22 what the process will be like, this is in the order, but it
23 contemplates that the Debtors and the committee and the ad
24 hoc groups will come together on a schedule of the actual
25 individuals and the coins to be distributed under the order.

1 We'll file that, we'll file that as soon as it's ready. Of
2 course, we're waiting for Your Honor's decision on the
3 custody wallets issue, but we're working on in it in the
4 background around the clock so that we're ready, we're ready
5 to file that schedule as promptly as possible and reopen
6 withdrawals. And, of course, we'll file the reporting that
7 Your Honor has asked for. Reopening withdrawals, people
8 will be able to request withdrawals and that'll be an
9 ongoing process. It's not as though the distributions will
10 all be made on one day. It'll be, it'll be over time as
11 people log into their app and give us their details and that
12 the transactions are completed. But we're working closely
13 with the committee and the ad hoc groups to make sure that
14 folks get their coins back as soon as possible.

15 THE COURT: Thank you very much. All right
16 there's a hand raised, Jason Lu.

17 MR. LU: I'm sorry, Your Honor. I couldn't lower
18 my hand but to answer your question earlier about what the
19 fees are like, just to give a bit of background, I ran a
20 crypto currency trading firm, so I'm very familiar with
21 this. And the good news is because cryptocurrency markets
22 and interest is so depressed right now, gas is super, super
23 cheap. As previously mentioned, Bitcoin is probably the
24 most expensive one and over the last month, it's been about
25 a dollar or two to send Bitcoins and that's irrespective of

1 the amount that's being sent.

2 THE COURT: Thank you very much. All right
3 there's another hand, Ezra Serrur. I'm probably
4 mispronouncing your last name. Go ahead.

5 MR. SERRUR: Hi, Your Honor. Just had a quick
6 question. So as the distribution schedule is put together,
7 if an individual creditor wants to, you know, make sure if
8 they, if they're, if they're understanding is that they have
9 a pure, you know, custody assets, if they want to, you know,
10 confirm that they're included in the distribution schedule,
11 who should they be communicating with?

12 THE COURT: Mr. Koenig, who should they
13 communicate with?

14 MR. KOENIG: If they reach out to me and my email
15 address is in the Debtor signature block. It's Chris Koenig
16 at Kirkland.com, we'll get you to the right place. And
17 we'll also, obviously, when we file the schedule, everybody
18 will have the opportunity to look, find your name on the
19 schedule, and reach out to us if you have any questions or
20 concerns.

21 MR. SERRUR: Thank you.

22 THE COURT: All right. There's another hand
23 raised. Jason Iovine, I'm probably mispronouncing it, but
24 go ahead.

25 MR. IOVINE: Actually, pretty good. Jason Iovine,

1 creditor, question about the distribution. What is the
2 determination about (indiscernible) that could have been
3 accidentally sent in after the petition date?

4 THE COURT: I'm sorry. I don't follow your
5 question.

6 MR. KOENIG: I do, Your Honor. Actually, yeah, I
7 do.

8 THE COURT: Mr. Koenig, go ahead.

9 MR. KOENIG: So, Your Honor, in your post-
10 petition, we become aware that there are certain customers
11 that have erroneously or accidentally submitted
12 cryptocurrency to the Debtors. Our view is that that
13 property is not -- new transactions post-petition is not
14 property of the Debtors' estate under Section 541 of the
15 bankruptcy code, which is only that property and the
16 Debtors' rights as of the petition date. So we are
17 preparing a motion for authority to return any
18 cryptocurrency that was erroneously, accidentally sent to us
19 post-petition because we don't believe that it's property of
20 the estate. And we believe that if it was not returned,
21 creditors would likely have an administrative claim for the
22 return of that property. So we're working to file that in
23 the next week or so and we'll have that heard at the January
24 24th hearing. But we understand the concern. We've
25 received some inquiries about it from similarly situated

1 creditors and we're working to address it in the near term.

2 THE COURT: All right. Mr. Iovine, does that
3 address your issue?

4 MR. IOVINE: Yes, sir, thank you.

5 THE COURT: Okay. All right, thank you. All
6 right. Do we have anything else for today?

7 MR. KOENIG: Nothing from the Debtors, Your Honor.
8 Thank you.

9 THE COURT: All right. Does anybody else wish to
10 be heard? Mr. Iovine, your hand is still raised. I don't
11 know whether you had something else you wanted to raise?

12 MR. IOVINE: Yes, Your Honor. I've been in
13 contact with Gregory Pesce and the UST, Miss Shara Cornell.
14 I sent some emails to them about some of the pro se
15 creditors doxing other employees and former ambassadors,
16 ambassadors who were volunteers to Celsius. And it has
17 become a detriment to some of us. And we've gotten threats
18 and no, I've got nothing, no reply other than Mr. Greg
19 saying that he'll look into it. But nothing since then.

20 THE COURT: Let me just say the Court became aware
21 yesterday that this is an issue. The Court has reached out
22 to the Office of the United States Marshal. And I take
23 these matters seriously. I have not seen anything in any
24 court filings that seemed problematic. And everybody who
25 has appeared at any of the hearings and spoken has been

1 quite respectful and I'm aware of that as well. So I guess
2 what I would say is I'm aware that this has become an issue
3 and I guess I would say is there's nothing I can do about it
4 now other than that having become aware of it, I've tried to
5 get the appropriate authorities to review what's been
6 happening. It's it, it is to say the least unfortunate at a
7 minimum. All right, Mr. Khanuja, again, I'm butchering
8 names, I'm sure, but go ahead.

9 MR. KHANUJA: Thank you, Your Honor. Your Honor,
10 I wanted to raise discussion to the Court as well as to the
11 regulators because I apparently, I see a clear conflict of
12 interest in the team who's organizing the bids and who are
13 also responsible for making decisions around the bids as
14 well. The team themselves, they were either, they're either
15 representing or defending Celsius and Alex Mashinsky or they
16 were hired by Alex Mashinsky. The motives and
17 qualifications of some of these leading the bid or bid
18 decisions is suspect as well. For example, K&E, they are
19 representing and defending Celsius. Chris Ferraro was
20 personally hired by Alex and was part of the problem that
21 led to these cases. For example, as the head of FP&A, he
22 should have identified the mismatch in Celsius assets and
23 liabilities and monitored it far sooner and then taken
24 actions against any further misrepresentation to the
25 clients.

1 Most importantly, Chris Ferraro's declaration is
2 counter to creditors claim around ownership of assets. So
3 any solution he proposes will likely be bias towards Celsius
4 and creditors may appeal against it. CCO, Mr. Blonstein, he
5 admitted to having no response, doing no responsibility
6 around consumer protection or even reviewing the policies
7 which would typically fall under CCO.

8 For the reasons I list all of these, list above, a
9 Celsius lead Newco should also be a complete no go. So any
10 time and effort and money being spent on that, on Celsius
11 led reorg, that should be a complete no go, saving the
12 estate money.

13 And then finally, with regards to what K&E and
14 Chris Ferraro mentioned around the progress they've made,
15 there are so many important decisions still pending around
16 ownership, the tax implications of Celsius claiming
17 ownership of assets, and a bunch of other things. All of
18 these have been pushed so many times. So in parallel, we
19 understand they're saying the dual track. But the dual
20 track is ineffective until a lot of these issues are
21 resolved.

22 THE COURT: All right, thank you. Mr. Frishberg?

23 MR. FRISHBERG: Hi, thank you, Your Honor. Some
24 of the threats were against me. I just wanted to provide a
25 bit of context. I got an offer from some former Celsius

1 employees, some of which were former Celsius employees.
2 They're part of the short squeeze, sell short squeeze group.
3 They're effectively trying to manipulate the price of the
4 cell token to short squeeze it. They offered me 150 percent
5 of my claim if I accepted it on the condition that I would
6 not appear in court or file any motions and I would leave my
7 Twitter account. I refused and I start getting harassment.
8 And the harassment started increasing. I found information
9 on my family was posted publicly. Most all of the
10 information posted publicly, was available about my family,
11 was publicly available. Then Alex Mashinsky attacked me on
12 Twitter saying that I'm hurting the Celsius community and
13 its recovery, which increased the amount of threats and
14 harassment. The one concerning the most was one that
15 mentioned an unspecified somebody would drop into the bottom
16 of the ocean like an anchor. Yeah, it's fairly concerning
17 and there has been a lot of misinformation and harassment
18 online towards creditors and pro ses especially. Thank you,
19 Your Honor.

20 THE COURT: All right. Mr. Iovine.

21 MR. IOVINE: Mr. Frishberg statements were false.
22 There was a claim by --

23 THE COURT: Stop, stop, stop. I'm not going to
24 have a back and forth between creditors. If there's
25 something you want to state about yourself, you can go ahead

1 and do that. But I'm not going to have this degenerate
2 into, he said, he said, that sort of thing. Okay. Is there
3 anything you wish to say for yourself?

4 MR. IOVINE: Yes. As one of the people offering
5 to buy out his claim, that's what it was, a buyout.

6 THE COURT: Okay. Mr. Herrmann.

7 MR. HERRMANN: Yes, Your Honor, Immanuel Herrmann,
8 pro se creditor. I just wanted to briefly comment on Mr.
9 Ferraro's presentation today and just say --

10 THE COURT: Mr. Herrmann, we're past, we're past
11 that. Ms. Cornell?

12 MS. CORNELL: Good morning. Again, it's Shara
13 Cornell on behalf of the Office of the United States
14 Trustee. I just wanted to respond very briefly to some of
15 the comments from some of the pro se creditors this morning.
16 And I just wanted to reiterate that if there are any
17 concerning emails or threats that any creditor or employee
18 are currently receiving or have received in connection with
19 the Celsius bankruptcy case, that they are more than invited
20 to please email or contact me. Our office takes these
21 threats very seriously. We investigate all threats and
22 although you may not receive an immediate response from me
23 or from my office, please be sure that our office is in
24 receipt and investigating these claims and take them
25 seriously. Thank you very much.

1 THE COURT: Thank you, Ms. Cornell. I appreciate
2 your having made that statement. It is of great concern to
3 me. It doesn't involve a pending motion, but I've seen the
4 flow of communications over the last few days. It is a
5 great concern. As I say, my chambers and the Court have
6 notified the US Marshals about it, but I appreciate your
7 indicating that people should be in touch with you, okay?

8 MS. CORNELL: Absolutely. Thank you.

9 THE COURT: Thank you very much. All right, we're
10 going to be adjourned for the day. Thank you very much.

11 MR. KOENIG: Thank you. Happy holidays, Your
12 Honor.

13 THE COURT: Happy holidays, everybody.

14 (Whereupon these proceedings were concluded at
15 11:13 AM)

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I N D E X

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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